

# **Bar Counsel's Report to the Supreme Judicial Court**

## **Fiscal Year 2007<sup>1</sup>**

### **Executive Summary**

This is a summary of the key points in the report that follows for the fiscal year that ended on August 31, 2007:

- Both the number and the median age of pending files in the Office of Bar Counsel on which petitions for discipline have not been filed decreased substantially in fiscal 2007. The number of lawyers with files over 3 years old that are not in petition has also been significantly reduced in the last year.
- Bar counsel this year, as in prior years, disposed of more complaint files than were received. The total number of open files pending at the end of the fiscal year decreased by 22% from the previous fiscal year.
- The number of petitions for discipline filed in fiscal 2007, including affidavits of resignation, increased by 7%.
- The Attorney and Consumer Assistance Program screened and resolved 81% of all telephone and written contacts with the Office of Bar Counsel without referral for investigation. ACAP disposed of 92% of all contacts within thirty days, and 96% within 45 days, either by resolving the inquiries or referring the matter for investigation.
- Bar counsel's ethics helpline provided guidance on issues of professional conduct to over 2000 lawyers.

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<sup>1</sup> As corrected online March 2008.

- Bar counsel continued this year to conduct a free monthly “trust account school” to provide lawyers with training on the record-keeping requirements of Mass. R. Prof. C. 1.15 as amended in 2004. Bar counsel and assistant bar counsel in addition made over 50 presentations on professional conduct to law schools, bar associations, and continuing legal education organizations.
- Bar counsel staff completed a full review of the ABA’s 2002 and 2003 amendments to the Model Rules of Professional Conduct and provided comprehensive draft recommendations to the SJC’s Standing Advisory Committee on the Rules of Professional Conduct.
- Bar counsel and the Board of Bar Overseers are in the process of providing the Supreme Judicial Court with proposals on amendments to Supreme Judicial Court Rule 4:01 and the Rules of the Board of Bar Overseers. These revisions address recommendations from the October 2005 American Bar Association report on the Massachusetts disciplinary system that the Supreme Judicial Court in April 2007 requested be implemented.
- Bar counsel is in the process of creating and implementing a diversion program for minor disciplinary violations that will go into effect in the upcoming year.
- In January 2007, the Supreme Judicial Court named Constance Vecchione as bar counsel to replace Daniel Crane, who resigned in June 2006.

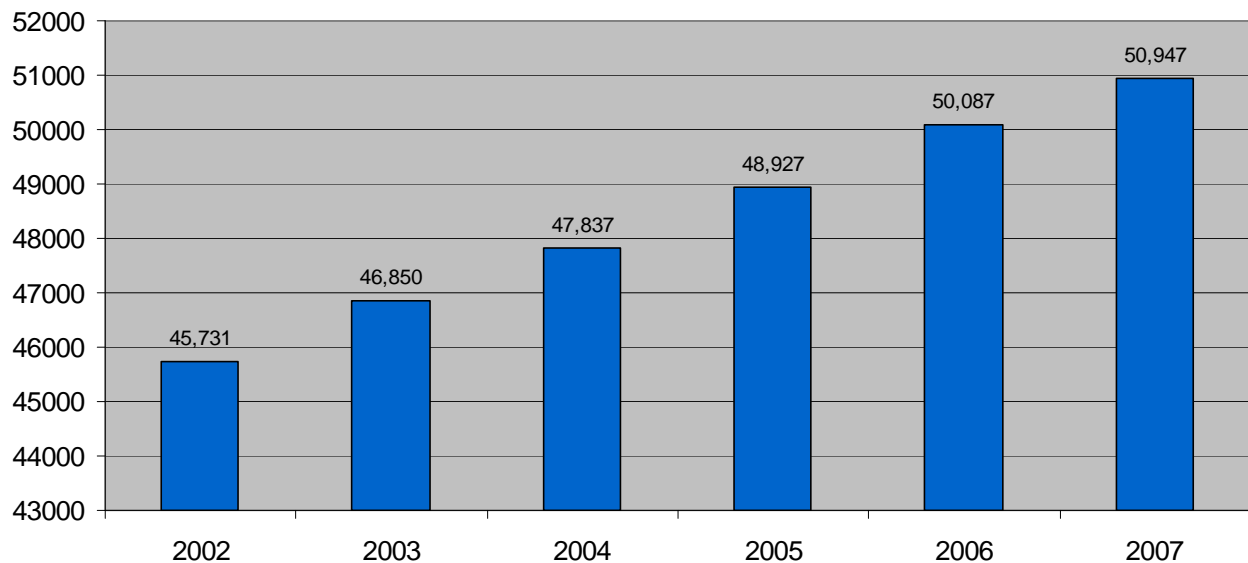
## Overview

The Justices of the Supreme Judicial Court established the Board of Bar Overseers, the Office of Bar Counsel, and the Clients' Security Board by rule in 1974. The Board of Bar Overseers collects annual registration fees and uses them to fund its operations and those of the Office of Bar Counsel and the Clients' Security Board. There were 50,947 lawyers registered on active status at the close of fiscal 2007. In addition, another 10,548 Massachusetts lawyers who asked to be placed on inactive status paid half of the annual registration fee.

Table One illustrates the continued growth in the number of attorneys admitted to the bar in Massachusetts and registered for active practice over the last six years.

**TABLE 1**

**Active Registered Lawyers in Massachusetts (2002-2007)**



The bar counsel, an independent prosecutor who serves at the pleasure of the Court, investigates grievances alleging professional misconduct against lawyers, and prosecutes formal charges against lawyers before the Board of Bar Overseers. The Board of Bar Overseers may dismiss charges, impose minor discipline, or recommend suspension or disbarment to the Court. The Board also hears petitions for reinstatement to the bar.

### **Fiscal Year 2007 Caseload**

#### **ACAP Contacts**

The Attorney and Consumer Assistance Program is the intake arm of the Office of Bar Counsel and plays a critical role by responding to consumer concerns while screening less serious complaints from turning into files opened against attorneys. The success of ACAP continues to benefit both the public and the bar and to enable bar counsel to focus attention on more serious matters.

When the Office of Bar Counsel is contacted about a grievance concerning a lawyer, a member of the ACAP staff responds promptly to that inquiry and attempts to identify the problem. ACAP resolves many such problems by providing information, calling the lawyer, or suggesting alternative ways of dealing with the dispute. ACAP assists clients by obtaining itemized bills, status reports, and the return of files and unearned retainers; discussing reasonable expectations and timetables in legal cases; and making referrals to lawyer referral services, fee dispute resolution services, and legal services organizations.

The Attorney and Consumer Assistance Program screened and resolved 81% of all telephone and written contacts with the Office of Bar Counsel in FY 2007 without referral for investigation. ACAP disposed of 92% of all contacts within thirty days, and 96% within 45 days, either by resolving the inquiries or referring the matter for investigation.

Since its inception in March 1999, ACAP has handled a total of 51,112 matters. During fiscal year 2007, ACAP responded to 5,292 potential complainants. Approximately 22% of these inquiries were received in written form; the remainder came from telephone calls. The ACAP staff issued forms for filing complaints in 25% of the telephone contacts. A complaint form is sent immediately where serious unethical conduct might be involved.

As in past years, client concerns as to lawyers' neglect, lack of diligence, or failure to return client calls were the leading causes of inquiries to ACAP. These problems accounted for almost 26% of all contacts. The area of law that generated the most inquiries to ACAP was domestic relations, followed by civil litigation, criminal defense, real estate, personal injury and trusts and estates.

Questions about legal fees generated another 10% of the calls to ACAP. This figure is consistent with prior years. This year, the Supreme Judicial Court proposed to appoint a committee to study the feasibility of requiring mandatory arbitration of fee disputes at the election of the client, as recommended in the ABA report on the Massachusetts disciplinary system. Bar counsel's view is that mandatory fee arbitration has many benefits, including providing a satisfactory means to address fee disputes outside of the disciplinary system.

### **Complaints Docketed**

The number of complaint files opened by the Office of Bar Counsel against attorneys in fiscal year 2007 totaled 969. This number is midrange between the number of files opened in FY 2005 (928) and the number opened in FY 2006 (1024).

Of the 969 complaint files docketed, 107 were matters that bar counsel initiated based upon information received about possible attorney misconduct. The 969 total files involved 796 attorneys: 700 of the respondent lawyers had one complaint filed against them, 68 had

two complaints, and 28 had three or more complaints filed in the fiscal year. The largest numbers of complaints opened continue to allege neglect or incompetence by the attorney or trust account violations. The legal areas generating the most complaints include real estate, civil litigation and personal injury, domestic matters and criminal defense.

There were 211 files opened as to 207 lawyers arising from mandatory notices sent by financial institutions of dishonored checks drawn on attorney trust accounts. The number of files is 37% higher than the total of 154 from the previous year and the previous year was almost 50% higher than the year before.

In part, the increase reflects better compliance by banks with the reporting requirements. However, because most dishonored checks would be prevented by improved record keeping, these figures suggest that some members of the bar are not maintaining records in compliance with Mass. R. Prof. C. 1.15 as amended in July 2004. To address this problem, bar counsel and the Boston Bar Association have combined to present members of the bar on the first Thursday of every month with a free training program on proper maintenance of trust accounts. In addition, bar counsel has hired an assistant to concentrate exclusively on handling dishonored check notices and outreach to the bar. Proper handling of trust funds is essential to public confidence in the bar.

Tables Two and Three report the classification of complaints docketed in fiscal 2007 based on an initial assessment of the nature of the misconduct alleged, if any, and of the primary legal area from which the facts arose.

**TABLE 2****Classification of 969 Complaints Received by Misconduct Alleged**

<b>Rules</b>	<b>Type of Misconduct</b>	<b>Complaints Received</b>	
1.1	Failure to provide competent representation	113	12%
1.2(a)	Failure to abide by a client's decision concerning the representation or taking unauthorized action on the client's behalf	90	9%
1.3	Neglect or lack of diligence	275	28%
1.4	Failure to communicate adequately with client	251	26%
1.5	Fee violations, including excessive or improper fees and failure to refund unearned fees	75	8%
1.6 and 1.9(c)	Failure to preserve client confidences or secrets	19	2%
1.7	Conflicts of interest between current clients or between client and attorney	42	4%
1.8	Conflicts of interest: prohibited transactions with clients including business transactions, financial assistance, and preparation of instruments of which lawyer or relative is beneficiary	30	3%
1.9	Conflicts of interest with former clients	12	1%
1.14	Conflicts of interest or other violations as to client under disability	2	0%
1.15	Trust account violations including commingling, conversion, record-keeping violations, failure to promptly pay litigation costs or client creditors or issuing dishonored checks	343	35%
1.16	Failure to properly withdraw from representation, including failure to return client files or documents	99	10%
3.1, 3.2, 3.3(b)-(e), 3.5 and 3.6	Improper trial conduct	25	3%
3.3(a), 4.1, 8.4(c), and 1.2(d)	Fraudulent or deceptive activity, including lying to clients, knowing use of false evidence or making a misrepresentation to a tribunal or third party	178	18%
3.4 and 4.4	Unfair conduct to opposing party	9	1%
4.2 and 4.3	Improper communications with a party known to be represented by counsel or unrepresented party	16	2%
5.1 and 5.3	Failure to supervise subordinates	8	1%
5.4 and 5.6	Failure to maintain professional independence including partnership or sharing fees with nonlawyer	3	0%
5.5	Unauthorized practice of law or assisting in unauthorized practice	14	1%
7.1 through 7.5	Improper communications concerning lawyer's services including improper advertising or solicitation	2	<1%
8.1	False statements in a bar admission or disciplinary matter	5	1%
8.3	Failure to report professional misconduct when required	28	3%
8.4(b)	Criminal conviction or conduct of attorney	48	5%
8.4(d) and 8.4(h)	Conduct prejudicial to the administration of justice, including conduct that is the subject of a contempt finding or court sanction	75	8%
	No Disciplinary Violation or Summary Dismissal	95	10%

\*Total exceeds number of complaints filed and total percentage exceeds 100% because, in many matters, more than one type of misconduct was alleged.

**TABLE 3**

**Classification of 969 Complaints Received by Primary Legal Area**

Administrative Law.....	9.....	1%	Immigration.....	36.....	4%
Bankruptcy.....	34.....	4%	Insurance.....	3.....	<1%
Civil Litigation.....	82.....	8%	Intellectual Property.....	2.....	<1%
Collections.....	12.....	1%	Landlord/Tenant.....	13.....	1%
Commercial Transactions.....	13.....	1%	Labor.....	19.....	2%
Consumer Law.....	2.....	<1%	Malpractice.....	8.....	1%
Corporations.....	14.....	1%	Municipal Law.....	4.....	<1%
Criminal Defense.....	71.....	7%	Personal Injury.....	90.....	9%
Criminal Prosecution.....	8.....	1%	Real Estate.....	164.....	17%
Conviction of Crime.....	21.....	2%	Taxation.....	2.....	<1%
Domestic Relations.....	112.....	12%	Torts.....	2.....	<1%
Estates.....	56.....	6%	Trusts.....	13.....	1%
Fiduciary.....	6.....	1%	No Legal Area or Unknown.....	162.....	17%
Industrial Accidents.....	8.....	1%		969	

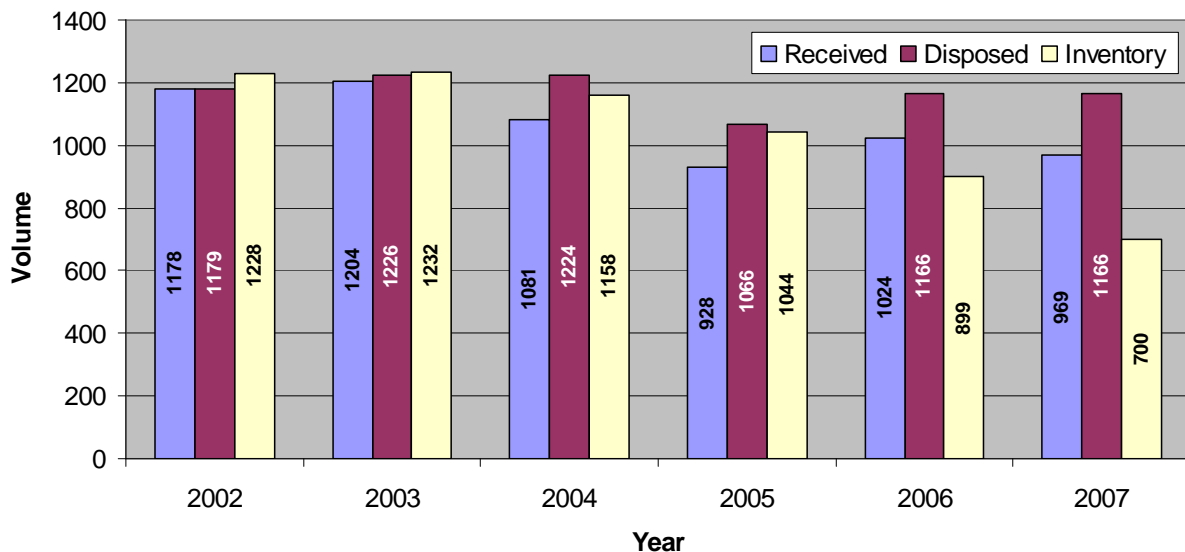
**Case Processing**

As in past years, the Office of Bar Counsel disposed of more files than were received, both by closing or dismissal and by discipline.

**TABLE 4**

**Complaints: Received, Disposed, and Inventory (2002-2007)**

**NOTE:** Numbers from past fiscal years may vary from those presented on previous annual reports due to a recently discovered computer programming error.



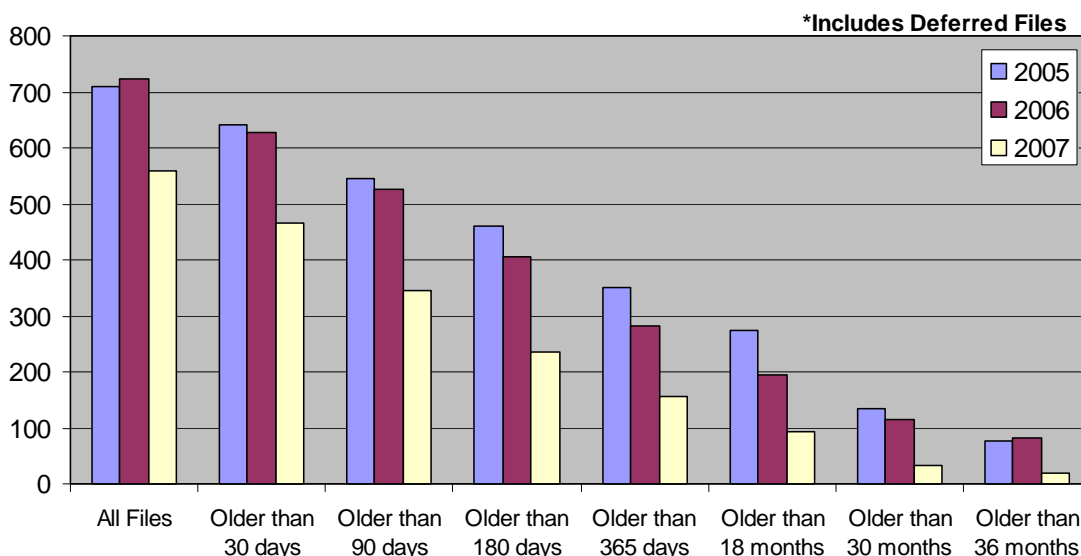


Disciplinary action was taken against 154 lawyers on 209 files. Bar counsel closed 825 files against 701 attorneys without docketing as formal complaints. An additional 56 files against 45 lawyers resulted in a warning along with dismissal of the complaint.

Bar counsel disposed of 33% of the files opened for investigation within ninety days and 69% of the files within a year of the date of filing, both by taking disciplinary action and closing files without disciplinary action. The following table shows the numbers of pending files not in petition, by age in days, in fiscal 2007 compared to fiscal 2006 and 2005.

**TABLE 5**

**Age of Files Not in Petition\***



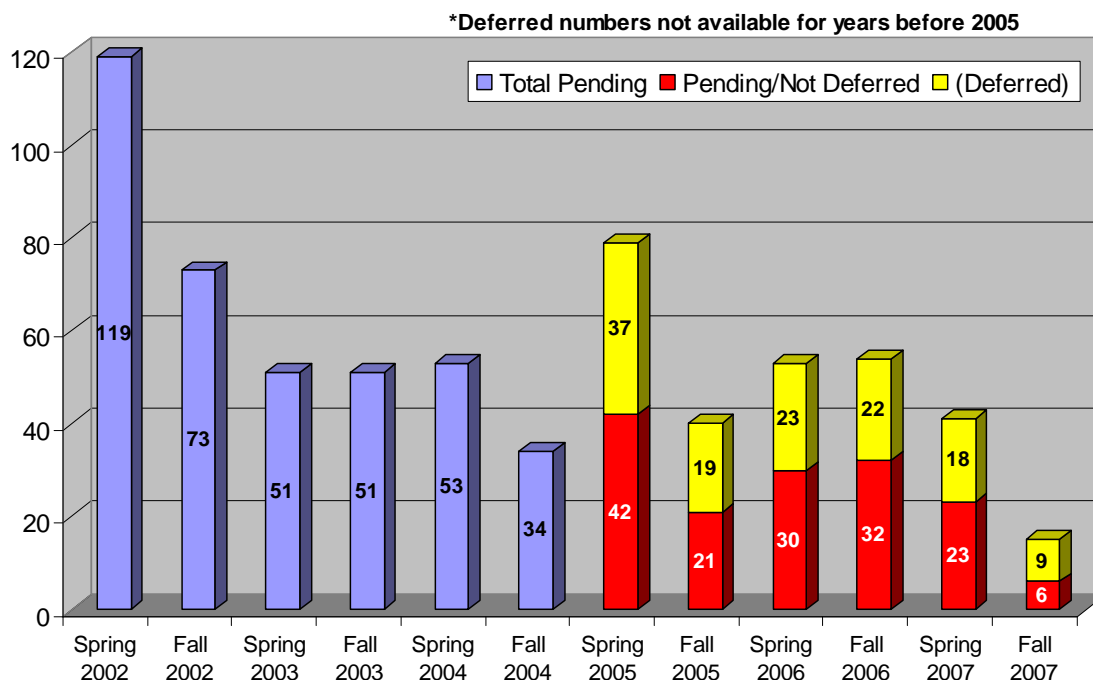
The Office of Bar Counsel has made substantial progress in reducing the time that matters remain under investigation before a petition for discipline is filed. The median age of all files not in petition decreased from 226 days old to 144 days old. The number of lawyers with pending files over three years old not in petition also decreased significantly to

a new low of 15, with 9 of those matters in a deferred status pending the outcome of related criminal or civil cases.

The table below provides a series of snapshots for each fiscal year since 2002 showing the number of lawyers under investigation for more than three years without a petition for discipline being filed.

**TABLE 6**

**Respondents with Pending Files Over Three Years Old\***



**Disciplinary Proceedings and Sanctions**

For the fiscal year ending August 31, 2007, there were 154 lawyers disciplined by the Board and the Court, compared to 128 in FY 2006. Of these, 50 attorneys received (private) admonitions, with 30 of those attorneys also required to attend a continuing legal education course. An additional 104 lawyers received public discipline, an increase of 28% over the last fiscal year: 31 lawyers were publicly reprimanded (including 4 reprimands reciprocal to

actions taken in other jurisdictions), 32 received a term suspension, 14 were indefinitely suspended, 6 submitted a disciplinary resignation, and 21 were disbarred or resigned and were disbarred. Another 15 lawyers were temporarily suspended from the practice of law pending formal disciplinary proceedings. A further 4 lawyers were placed on disability inactive status.

Tables Seven and Eight below show the primary legal area from which the facts arose in the cases on which lawyers were disciplined in fiscal 2007 and the types of misconduct found.

**TABLE 7**  
**Classification of Complaints Resulting in Discipline by Primary Area of Law**

Legal Area	Disbarment		Suspension		Public Reprimand		Admonition	
Administrative Law					1	3%		
Bankruptcy					1	3%		
Civil Litigation	10	21%			2	6%	11	20%
Collections			1	2%	1	3%	1	2%
Commercial Law					2	6%		
Corporations			3	5%				
Criminal Defense	3	6%	5	9%	1	3%	5	9%
Criminal Conviction	1	2%	1	2%				
Domestic Relations	5	11%	4	7%	2	6%	9	17%
Escrow					1	3%		
Estates	3	6%	6	10%	4	11%	4	7%
Fiduciaries	2	4%	1	2%	4	11%	1	2%
Immigration			8	14%			2	4%
Landlord/Tenant					1	3%	1	2%
Labor	4	9%	1	2%	1	3%	1	2%
Malpractice					2	6%	1	2%
Personal Injury	2	4%	10	17%	3	9%	6	11%
Reciprocal Discipline			2	3%				
Real Estate	11	23%	6	10%	7	20%	9	17%
Tax			1	2%			1	2%
Torts			1	2%				
Trusts			3	5%			2	4%
Non-Legal, Misc.	6	13%	5	9%	2	6%		

**TABLE 8**  
**Classification of Complaints Resulting in Discipline by Type of Misconduct\***

Rules	Type of Misconduct	Disbarment		Suspension		Public Reprimand		Admonition	
1.1	Failure to provide competent representation	10	24%	17	25%	12	40%	16	30%
1.2(a)	Failure to abide by a client's decision concerning the representation or taking unauthorized action on the client's behalf	6	15%	16	24%	6	20%	10	19%
1.3	Neglect or lack of diligence	13	32%	31	46%	14	47%	33	61%
1.4	Failure to communicate adequately with client	15	37%	23	34%	10	33%	29	54%
1.5	Fee violations, including excessive or improper fees and failure to refund unearned fees			9	13%	1	3%	2	4%
1.6 & 1.9(c)	Failure to preserve client confidences or secrets			1	1%	1	3%	3	6%
1.7	Conflicts of interest between current clients or between client and attorney	1	2%	6	9%	6	20%	2	4%
1.8	Conflicts of interest: prohibited transactions with clients including business transactions, financial assistance, and preparation of instruments of which lawyer or relative is beneficiary	2	5%	6	9%	3	10%	2	4%
1.9	Conflicts of interest with former clients					1	3%	1	2%
1.15	Trust account violations including commingling, conversion, record-keeping violations, failure to promptly pay litigation costs or client creditors or issuing dishonored checks	36	88%	21	31%	14	47%	3	6%
1.16	Failure to properly withdraw from representation, including failure to return client files or documents	2	5%	19	28%	1	3%	14	26%
3.1, 3.2, 3.3(b)-(e), 3.5, 3.6	Improper trial conduct	6	15%	8	12%	3	10%		
3.3(a), 4.1, 8.4(c), & 1.2(d)	Fraudulent or deceptive activity, including lying to clients, knowing use of false evidence or making a misrepresentation to a tribunal or third party	35	85%	35	51%	5	17%	7	13%
5.1 & 5.3	Failure to supervise subordinates			2	3%	1	3%	1	2%
5.4 & 5.6	Failure to maintain professional independence including partnership or sharing fees with nonlawyer			1	1%				
5.5	Unauthorized practice of law or assisting in unauthorized practice	3	7%	2	3%				
7.1 through 7.5	Improper communications concerning lawyer's services including improper advertising or solicitation					2	7%		
8.1	False statements in a bar admission or disciplinary matter	3	7%	2	3%	2	7%		
8.4(b)	Criminal conviction or conduct of attorney	3	7%	4	6%				
8.4(d) & 8.4(h)	Conduct prejudicial to the administration of justice, including conduct that is the subject of a contempt finding or court sanction	32	78%	33	49%	7	23%	5	9%
8.4(b)	Failure to cooperate with bar counsel	11	27%	7	10%	1	3%	4	7%

\*Totals exceed number of sanctions imposed and percentage exceeds 100% because more than one rule was violated.

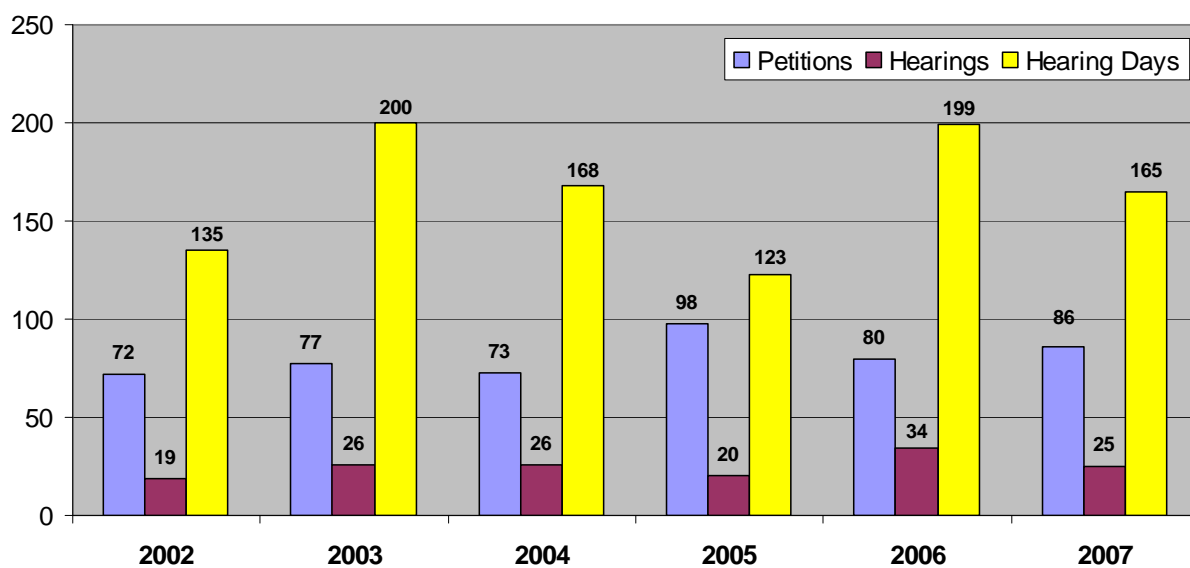
The Office of Bar Counsel filed 86 petitions for discipline (including affidavits of resignation) requesting formal hearings before the Board, an increase of 7% from a year earlier. In addition, 12 petitions for reciprocal discipline (petitions based on public discipline in another jurisdiction where the attorney is admitted) were filed directly with the Court.

A total of 165 hearing dates were held before hearing committees, the Board, and the Court. Evidentiary hearings were conducted in 25 cases, with 61 days of evidentiary hearings. Bar counsel filed 59 post-hearing requests for findings and rulings or appeal briefs, including 12 briefs to the full bench of the Supreme Judicial Court.

The table below provides a comparison of number of petitions filed, matters heard, and hearing dates for this year and the preceding five years.

**TABLE 9**

**Comparison of Petitions, Hearings, and Hearing Days  
(2002-2007)**



Of the petitions filed during the fiscal year, 24 matters were awaiting evidentiary hearing at the end of the fiscal year. Another 7 cases with evidentiary hearings concluded were awaiting reports from hearing committees or single hearing officers.

In addition to petitions for discipline, there were also 4 petitions for reinstatement filed during FY 2007 by suspended or disbarred attorneys. After hearing, 9 lawyers (some of whom had petitions pending at the start of the fiscal year) were reinstated to practice and one lawyer was denied reinstatement. Following short suspensions, 11 lawyers were reinstated to practice without petition or hearing.

The Justices issued 14 full court opinions on bar discipline cases:

- *Matter of Discipline of an Attorney*, 448 Mass. 819 (2007), admonition of an inexperienced attorney for misleading correspondence to a client and bar counsel and for entering into a contingent fee agreement that improperly capped the client's obligation for expenses.
- *Matter of Discipline of an Attorney*, 449 Mass. 1001 (2007), admonition for a conflict of interest between father and son clients, where the violation involved an isolated incident not motivated by self-interest.
- *Matter of Carnahan*, 449 Mass. 1003 (2007), public reprimand for a conflict of interest between an elderly client and another client who owed the elderly client money, where the violation did not involve self-dealing or substantial harm and the lawyer thought that he was doing what the elderly client wanted.
- *Matter of Driscoll*, 447 Mass. 678 (2006), one-year suspension of attorney who pled guilty to making false statements to a federally insured bank, with the court finding that notarization of lawyer's secretary's husband's signature on closing documents where the husband was not present and, unbeknownst to the attorney, had not signed the papers were not as egregious as those matters warranting the presumptive sanction of indefinite suspension or disbarment for felony convictions.
- *Matter of Franchitto*, 448 Mass. 1007 (2007), public reprimand of a conveyancer for trust account and other violations, including violations of the "good funds" statute, where the attorney was a victim of his lender client's fraud, self-reported himself to the Board, and committed the misconduct as a result of lapses of judgment under stressful circumstances.

- *Matter of Grossman*, 448 Mass. 151 (2007), indefinite suspension for conversion of trust funds (since repaid) and affirming that delay by bar counsel in filing charges is not mitigating absent proof of substantial prejudice.
- *Matter of Hilson*, 448 Mass. 603 (2007), indefinite suspension for conversion of trust funds (since repaid), breach of client confidences, and false testimony.
- *Matter of LiBassi*, 449 Mass. 1014 (2007), disbarment for misuse of client funds and continuing to practice law while temporarily suspended.
- *Matter of McBride*, 449 Mass. 154 (2007), disbarment for multiple instances of misconduct, including intentional misappropriation of trust funds and neglect.
- *Matter of Moore*, 449 Mass. 1009 (2007), affirming the order of a single justice holding a suspended attorney in contempt for giving legal advice in an immigration matter and doubling the original suspension pursuant to Supreme Judicial Court Rule 4:01, § 17(8).
- *Matter of Sheridan*, 449 Mass. 1005 (2007), denying retroactivity in a reciprocal discipline matter to an attorney who did not report his New Hampshire suspension.
- *Matter of Slavitt*, 449 Mass. 25 (2007), two-month suspension for false statements in a letter of recommendation to the Board of Bar Examiners on behalf of a bar applicant.
- *Matter of Steinberg*, 448 Mass. 1024 (2007), suspension of a year and a day on a reciprocal discipline matter, where the suspension in the original jurisdiction had been 60 days but the standard sanction appropriate in Massachusetts was a longer suspension.
- *Matter of Wainwright*, 448 Mass. 378 (2007), public reprimands for two attorneys who represented two clients with adverse interests in the same transaction, where clients were aware of the dual representation and the lawyers' violations in failing to make full disclosure were errors of omission, not commission.

Two other full bench decisions, in both of which the Board and bar counsel were represented by the Office of the Attorney General, involved procedural issues relating to bar discipline:

- *Matter of a Request for an Investigation of an Attorney*, 449 Mass. 1013 (2007), confirming that a complainant in a bar discipline matter has no standing to challenge in court the decision not to prosecute a complaint alleging misconduct of an attorney and affirming the dismissal of a petition filed in the county court.
- *Kettenbach v. Board of Bar Overseers*, 448 Mass. 1019 (2007), holding that the Board of Bar Overseers and the Office of the Bar Counsel are exempt from the public records law.

## **Related Activities and Other News of Note**

### **Proposed Rules Changes**

In April 2007, the Court asked the Office of Bar Counsel and the Board of Bar Overseers to submit proposals to implement certain recommendations made by a team from

the American Bar Association's Standing Committee on Lawyer Discipline of the American Bar Association. The ABA recommendations arose from its evaluation of the Massachusetts lawyer discipline system in June 2005. The ABA issued a report in October 2005, <http://www.mass.gov/courts/abareport06.pdf>. The Supreme Judicial Court in January 2006 requested comments and, in response, received submissions from bar counsel (<http://www.mass.gov/obcbbo/proposals.htm>), the Board, and bar associations. Bar counsel and the Board are now working to provide draft rules changes in accordance with the Court's directives.

As a separate matter, the Office of Bar Counsel in December 2006 concluded a substantial project reviewing all revisions made by the American Bar Association to the Model Rules of Professional Conduct since the Massachusetts Rules of Professional Conduct were adopted in 1998. On January 5, 2007, bar counsel forwarded to the Court's Standing Advisory Committee on the Rules of Professional Conduct charts comparing each current ABA Model Rule with its analogous Massachusetts Rule of Professional Conduct, redlined with bar counsel's recommendations and comments on the proposed amendments.

### **Ethics Helpline and CLE Presentations**

The Office of Bar Counsel continues to work to help lawyers avoid preventable ethical problems. Toward this end, assistant bar counsel fielded over 2000 calls on the ethics helpline during call-in hours, many raising complicated and difficult questions that underscore the bar's heightened awareness of issues of professional conduct.

In addition, to assist lawyers with the trust account record-keeping requirements of amended Mass. R. Prof. C. 1.15 and to reduce the numbers of complaints arising from receipt of notices of dishonored checks, bar counsel continued the free one-hour "trust account



school,” begun in October 2005 and held monthly at the Boston Bar Association. At least 120 attorneys and their bookkeepers attended the program last year. In early 2007, bar counsel through Massachusetts Continuing Legal Education also offered three additional trust account training programs in Boston, western Massachusetts, and southeastern Massachusetts.

Bar counsel staff made over 50 presentations on professional conduct to law schools, bar associations, and continuing education organizations. Beyond trust accounting, other topics addressed included conflicts of interest, reporting misconduct, withdrawal and file retention policies, criminal defense, and advertising. Attorneys from the Office of Bar Counsel also continued to serve on bar association and court-appointed committees.

### **Website Update**

Another resource for the bar and the public is the website maintained by the Office of Bar Counsel, [www.mass.gov/obcbbo](http://www.mass.gov/obcbbo), which provides access to all of the pertinent rules and decisions back to 1999, as well as a collection of articles by staff on ethical issues. The current status of all registered attorneys may also be accessed through a link to the website of the Board of Bar Overseers, <http://massbbo.org/bbolookup.php>.

Starting this fall, the Board’s website now also includes information provided by active status attorneys as to whether or not they carry malpractice insurance. The addition of this information is a result of a June 2006 Supreme Judicial Court order amending S.J.C. Rule 4:02 to require that lawyers certify in their annual registration statements whether or not they are covered by professional liability insurance. Preliminary statistics for FY 2007 (the first full year that the requirement has been in effect) suggest that approximately 78% of active lawyers in private practice maintain malpractice insurance.

## **LOMAP**

Another proposal by the Office of Bar Counsel that has been implemented this year is the creation of an independent law office management assistance program under the auspices of Lawyers Concerned for Lawyers. In conjunction with a recommendation made by the Office of Bar Counsel in 2005 to the ABA visiting team, former chief bar counsel Daniel Crane suggested to LCL that it add practice management assistance to its array of services. The Office of Bar Counsel and the Board assisted LCL in 2006 to obtain approval from the SJC for funding this program through registration fees. Modeled on similar programs in other jurisdictions, the LOMAP program, [www.masslomap.org](http://www.masslomap.org), was established by LCL in 2007 and a director hired.

LOMAP's mission is to assist Massachusetts lawyers practicing in solo and small firms in improving the operations, management, and professionalism of their law offices. The goal is to increase their ability to deliver high quality legal services, decrease conflicts with clients, and improve their quality of life. LOMAP will provide law office management consulting services, materials, and educational programs to help attorneys to meet these goals, including assistance with trust accounting. The Office of Bar Counsel also expects to refer lawyers needing such assistance to the program, either in addition to discipline or in lieu of discipline as part of a new diversion program.

## **Diversion**

This diversion program will be implemented by the Office of Bar Counsel in the upcoming year for certain types of minor disciplinary violations. An experienced assistant bar counsel from the ACAP staff has been named as diversion coordinator. The expectation is that certain types of low-level misconduct will be better addressed by

education and assistance than by discipline. In addition to the referrals to LOMAP on practice management problems, diversion to LCL or other service providers may also be appropriate for substance abuse or mental health issues, trust account training and follow-up, fee arbitration, and substantive CLE courses.

### **Staff Appointments**

In January 2007, following the resignation of Daniel Crane in June 2006 and at the recommendation of a search committee and of the Board of Bar Overseers, the Supreme Judicial Court appointed Constance Vecchione as chief bar counsel.

Ms. Vecchione has been with the Office of Bar Counsel since 1980 and had been first assistant bar counsel since 1989. John W. Marshall, a member of the staff since 1995, was named as the new first assistant bar counsel, joining Nancy Kaufman in that position.

### **Facilitating Continuous Improvement**

Consistent with the privilege of self-regulation, the Office of Bar Counsel expects to work with the bar in a cooperative relationship that will foster public confidence in the disciplinary process. The outstanding cooperation that ACAP receives from attorneys in resolving client concerns before complaints become necessary, as well as the bar's ongoing willingness to call bar counsel's ethics hotline before questions become problems, has already helped. The institution of the LOMAP and diversions programs are other big steps forward. Public information on whether an attorney is covered by malpractice insurance will make clients better informed in choosing a lawyer. The proposal by the Supreme Judicial Court to appoint a committee to study the feasibility of mandatory fee arbitration at the election of the client is another positive move; bar counsel believes that the adoption of such a requirement, along with encouragement of written fee agreements, would decrease the

numbers of complaints filed. Bar counsel has substantially reduced the time spent in investigating allegations of misconduct and expects that proposals to implement the ABA recommendations will enable the office to make greater progress.

Bar counsel and the staff remain committed to the mission of the Office of Bar Counsel: protecting the public from unethical conduct and preserving and enhancing the integrity and high standards of the bar while striving for fairness in all dealings with lawyers and consumers alike.